

**BEFORE THE**  
**STATE OF CALIFORNIA**  
**OCCUPATIONAL SAFETY AND HEALTH**  
**APPEALS BOARD**

In the Matter of the Appeal of:

GRAND BUILDERS  
314 West Kenneth Road  
Glendale, CA 91202

Employer

Docket No. 07-R4D3-9344

**DECISION AFTER  
RECONSIDERATION  
AND ORDER OF REMAND**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having granted the petition for reconsideration filed in the above entitled matter by Grand Builders (Employer), makes the following decision after reconsideration.

**JURISDICTION**

Between August 20, 2006 and February 15, 2007, a representative of the Division of Occupational Safety and Health (the Division) conducted an accident investigation at a place of employment maintained by Employer at 17432 Roscoe Boulevard, Northridge, California (the site). The Division issued Employer various citations for violations of Title 8, California Code of Regulations.<sup>1</sup>

The issuance date stated on the citations is February 16, 2007.

Employer timely initiated its appeal by telephone. The Board sent Employer a confirming letter on March 1, 2007. Employer appears to have responded as required by sending the Board a letter dated March 7, 2007, although that mailing was apparently not received by the Board because the Board sent Employer a Notice of Intent to Dismiss Appeal on April 26, 2007, which was unclaimed and to which Notice Employer did not respond.

On October 30, 2007, an Administrative Law Judge (ALJ) of the Board issued an Order Dismissing Appeal. Employer timely petitioned for reconsideration of that Order. The Division did not file an Answer to the petition. The Board took Employer's petition under submission on January 23, 2008.

---

<sup>1</sup> Unless otherwise specified all references are to sections of Title 8, California Code of Regulations.

## **ISSUE**

Was the Order Dismissing Appeal appropriately issued?

## **FINDINGS AND REASONS FOR DECISION AFTER RECONSIDERATION**

The petition, which was verified under penalty of perjury, states that Employer mailed documents perfecting its appeal to the Board on March 7, 2007. With the petition Employer submitted copies of completed appeal forms it claims were sent with the citations attached dated March 7, 2007. For unknown reasons those documents were not received by the Board at the time they were originally sent, and to all appearances it seemed Employer had failed to perfect its appeal.

Since in this case we have no information contradicting Employer's sworn petition, and the circumstances do not dictate otherwise, and there are no contrary facts in the record, the Board will accept the statements made under penalty of perjury as true. *Club Fresh, LLC*, Cal/OSHA App. 06-9241, Decision After Reconsideration (Sep. 14, 2007). We conclude, therefore, that Employer did timely mail documents which perfected its appeal in response to the Board's March 1, 2007 letter. It follows, therefore, that the Order Dismissing Appeal was improvidently issued, and would not have been had Employer's documents reached the Board as intended. That they did not is neither Employer's nor the Board's fault, and it would be unjust to dismiss Employer's appeal when it had in fact taken the actions required to perfect the appeal.<sup>2</sup> See *Ferma Corporation*, Cal/OSHA App. 74-917, Decision After Reconsideration (Nov. 12, 1975)

## **ORDER**

Because Employer's appeal was timely, we conclude that the Order Dismissing Appeal is invalid and we rescind that order and remand this matter to the Appeals Board's appeals initiation unit for further proceedings.

CANDICE A. TRAEGER, Chairwoman  
ROBERT PACHECO, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: March 28, 2008

---

<sup>2</sup> We note, however, that had Employer responded to the April 2007 Notice of Intent to Dismiss Appeal, the problem of mail delivery would have been revealed and resolved earlier and with less effort for all involved.